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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-275

Filed: 6 September 2016

Wilkes County, Nos. 15 JA 118-19, 121-22

IN THE MATTER OF: B.N.H., B.N.H., C.A.H., & C.M.H.

Appeal by respondent mother from order entered 2 November 2015 by Judge Jeanie R. Houston in Wilkes County District Court. Heard in the Court of Appeals 15 August 2016.

Paul W. Freeman, Jr., for petitioner-appellee Wilkes County Department of Social Services.

Daniel Melo, for guardian ad litem.

Miller & Audino, LLP, by Jay Anthony Audino, for respondent-appellant mother.

DIETZ, Judge.

Respondent appeals from an order adjudicating her four children as neglected juveniles. As explained below, we reverse the trial court's order because, to prove its allegations of neglect, the Wilkes County Department of Social Services relied on evidence that did not exist until after DSS filed the petitions. Under our case law, an adjudication of neglect must be based solely on evidence that exists at the time DSS files a petition. We note, however, that our holding in this appeal does not prevent

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DSS from refiling its petitions and alleging new facts that have arisen since the original petitions, and which would support an adjudication of neglect.

Facts and Procedural History

On 24 June 2015, DSS filed juvenile petitions alleging that Respondent's four children, Chad, Connor, Brittany, and Bert,¹ were neglected because they did not receive "proper care, supervision, or discipline" from their parents. N.C. Gen. Stat. § 7B-101(15). Each petition alleged the following facts as the basis of the child's neglected status:

Report received [13 June 2014] alleging neglect of said minor child. Allegations included domestic violence in the home. Another report received on 11/21/14 alleging neglect of said minor child. Allegations included domestic violence and drug use. [DSS] continues to have concerns over domestic discord in the home. The case was substantiated on 1/7/15. [Respondent-mother] has signed a case plan and has not completed any activities to correct identified issues. [Respondent-father] has not yet signed a case plan or completed any activities to correct identified issues. [Respondents] were charged with school attendance law violations in 2014 and 2015 because [Connor and Chad] were not attending school on a regular basis.

Rather than seek non-secure custody, DSS left the children in their parents' care on the condition that the parents comply with a case plan.

The trial court originally scheduled the adjudicatory hearing for 27 July 2015. By consent of the parties, who "had reached a tentative resolution of the issues" raised

¹ We use pseudonyms to protect the children's identities.

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in the petitions, the court continued the adjudicatory hearing to 28 September 2015. The parties agreed that DSS would seek to dismiss its petitions if the parents “complete[d] the items and things” in their case plans by 28 September 2015. DSS allowed the children to remain in the home during this time, provided the parents kept the “home in a safe and clean condition and otherwise [free of] conditions which would pose a threat to the safety and/or welfare of any of the children.”

After receiving evidence on 28 September 2015 and hearing the arguments of counsel on 5 October 2015, the trial court adjudicated the children as neglected juveniles and placed them in the custody of DSS. Respondent, the children’s mother, timely appealed.

Analysis

Respondent argues that the trial court improperly relied on “post-petition evidence,” meaning evidence that did not exist until after DSS filed the petitions in this cause on 24 June 2015. We agree and therefore reverse.

“[T]he purpose of the adjudication hearing is to adjudicate the existence or nonexistence of any of the conditions alleged in a petition.” *In re A.B.*, 179 N.C. App. 605, 609, 635 S.E.2d 11, 15 (2006). Thus, at the adjudicatory stage of the proceeding, the trial court may not consider facts or events that occurred after the filing of the juvenile petition. *Id.*

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DSS filed its petitions on 24 June 2015, alleging that the four children were neglected. A juvenile may be adjudicated neglected based on a finding that the juvenile “does not receive proper care, supervision, or discipline from the juvenile’s parent, guardian, custodian, or caretaker” or that the juvenile “lives in an environment injurious to the juvenile’s welfare.” N.C. Gen. Stat. § 7B-101(15).

At the hearing on 28 September 2015, DSS called one witness, a social worker. Based on that social worker’s testimony, the trial court made the following findings in support of its adjudication of neglect:

5. . . . [DSS] began its involvement with this family in June, 2014. DSS became involved because of domestic violence occurring between the parents. A subsequent report of domestic violence and parental substance abuse was received and investigated by the Department on November 21, 2014. As a result of this latter report, law enforcement officials were summoned to the children’s home to search for evidence of a methamphetamine laboratory. No laboratory was found.

6. Because of the concerns set forth above, [DSS] began offering Case Management Services to the family. The children remained in the parents’ home during this time. On January 7, 2015, the children’s mother entered into a Case Management Plan which required that she do the following:

A. Have a domestic violence assessment and participate in any recommended follow up counseling and treatment;

B. Insure that each of the children attended therapy and that the parents participated in family therapy as requested by the children’s therapist; and

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C. [Connor] was to be taken to the office of the Division of Juvenile Justice because of his extremely defiant behaviors and his suspension from school during March, 2014 for the remainder of the school year.

7. The mother failed to comply with any of the above requirements, despite having had multiple opportunities to do so. The children's father did not sign a Case Plan. Indeed, the children's father left the home between February, 2015 and June, 2015. Supposedly the father spent some of this time in a mental hospital in Tennessee. . . . To date, it is unknown where the father was for the period of February, 2015 through June, 2015.

8. Because of the failure of the children's mother to accomplish any of the tasks of the Case Management Plan, the marital instability referenced above, and continuing concerns over the children's behaviors and lack of significant improvement, [DSS] filed Juvenile Petitions alleging that the children were neglected juveniles However, the children were allowed to remain in the Parents' home after the filing of the Petitions.

.....

10. *Since July 27, 2015, the parents have not completed their Case Plan. . . .*

11. . . . [T]he parents are now separated and the father is not providing support for the children or the mother.

12. . . . *[S]ince July 27, 2015, the following events have occurred.*

A. The children's mother had a domestic violence assessment.

B. The children were taken for mental health

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evaluations. No further treatment was recommended for any of the children other than [Connor]. The mother has not enrolled in that therapy.

C. Although the mother has been told that [Connor] should be taken to the Department [sic] of Juvenile Justice office since June, 2014, he was taken by her only within the last week.

....

E. Both of the parents have been convicted for the second time of violating the mandatory school attendance laws. . . .

....

19. Despite having had more than fifteen (15) months to address the issues of concern as outline[d] above and being provided additional time after the filing of the Petition[s] to remedy the problems which brought about the filing of the Petitions, the children's parents have failed to do so. The children have remained in the parents' home throughout this time. By failing to improve the conditions as set forth above, the parents have created an environment for the children which is injurious to the children's welfare and poses a substantial risk to their physical and mental health.

(Emphasis added).

We agree with Respondent that these findings cannot support the trial court's conclusion of neglect without considering facts and events, referenced in the trial court's evidentiary findings, that occurred after DSS filed the petitions.

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As reflected in the trial court's findings, DSS presented no competent evidence that Respondent actually was involved in the manufacture, sale, or use of illegal drugs before DSS filed the petitions. Likewise, DSS presented no competent evidence of any domestic violence occurring in the home before DSS filed the petitions. Finally, DSS presented no competent evidence that Respondent failed to ensure her children received a proper education to such a degree that it constituted neglect under our case law. *See State v. Jones*, 213 N.C. App. 59, 67, 711 S.E.2d 791, 797 (2011). Simply put, the evidence properly before the trial court was insufficient to support the adjudication of neglect. To be sure, events occurring after DSS filed the petition appear likely to support an adjudication of neglect. But we cannot consider that evidence in our review of the trial court's order. *In re A.B.*, 179 N.C. App. at 609, 635 S.E.2d at 15. Thus, we must reverse.

We note that our decision in this case does not prevent DSS from again petitioning for an adjudication of neglect and incorporating evidence from more recent events. Our holding only addresses the evidence as it existed when DSS filed the petitions at issue in this case.

Because we reverse the adjudication of neglect on this basis, we need not address Respondent's alternative arguments concerning adjudication or Respondent's arguments addressing the disposition. *See In re C.W.*, 182 N.C. App. 214, 229, 641 S.E.2d 725, 735 (2007).

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Conclusion

For the reasons set out above, we reverse the trial court's order.

REVERSED.

Judges STEPHENS and DAVIS concur.

Report per Rule 30(e).